

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**JOSHUA MCCARTY, as Administrator  
of the Estate of LORA MCCARTY,**

**Plaintiff,**

**v.**

**CABELL HUNTINGTON HOSPITAL, INC.,  
d/b/a Cabell Huntington Hospital;  
UNIVERSITY PHYSICIANS & SURGEONS,  
INC.; and MARSHALL UNIVERSITY  
BOARD OF GOVERNORS,**

**Defendants.**

**CIVIL ACTION NO. 3:12-4360**

**JUDGE ROBERT C. CHAMBERS**

**AMENDED ORDER APPROVING SETTLEMENT AND DISBURSEMENT**

This matter is before the court on a Motion to Approve a Proposed Disbursement. (ECF No. 26) The Court held in ABEYANCE the motion pending receipt of the report from Guardian Ad Litem approving the disbursement. The Court directed the Plaintiff to file as necessary any proposed order for approval of the proposed disbursement. (ECF No. 27) The court has received the Answer and Report of Guardian Ad-Litem on Behalf of The Minor child of Lora McCarty Concerning Claim with West Virginia Patient Injury Compensation Fund ("WVPICF").

Plaintiff now files this Amended Proposed Order Approving Settlement and Disbursement, indicating the Plaintiff has no objection to the report and recommendation of the Guardian Ad-Litem to divide and distribute the net proceeds from this settlement as follows: Forty Percent (40%) to Karli Shae McCarty, a minor, and Sixty Percent (60%) to Joshua McCarty. Likewise, Plaintiff agrees to the placement of the settlement funds for Karli Shae McCarty in a conservatorship and under the

jurisdiction of the Greenup District Court, just as was done with the previous settlement proceeds for Karli Shae McCarty.

Accordingly, the Court finds that the Plaintiff has received an award from the WVPICF in the amount of Eight Hundred Forty-One Thousand Two Hundred Fifty-Four Dollars (\$841,254.00). Plaintiff attaches a Release as Exhibit 1. The Court approves this settlement and authorizes the Plaintiff to execute the Release. After deducting contractual attorney fees of Forty-Percent (40%), Three Hundred Thirty-Six Thousand Five Hundred and One Dollars and Sixty Cents (\$336,501.60), and costs incurred in the amount of Two Hundred Six Dollars and Twenty Cents (\$206.20), a balance of Five Hundred Four Thousand Five Hundred Forty-Six Dollars and Twenty Cents (\$504,546.20) remains. The Court finds that it is in the best interest of the minor child, Karli Shae McCarty, for her father, Joshua McCarty, to receive Sixty Percent (60%), Three Hundred and Two Thousand Seven Hundred and Twenty Seven Dollars and Twenty-two Cents (\$302,727.72) of the net proceeds from the award by the WVPICF and that the minor child, Karli Shae McCarty, receive forty percent (40%), Two Hundred and One Thousand Eight Hundred and Eighteen Dollars and Forty-Eight Cents (\$201,818.48) of those funds. The Court further finds that the Guardian Ad-Litem's fees, in the amount of One Thousand Two-Hundred Dollars (\$1,200.00) shall be paid out of the attorney fees portion of the settlement proceeds.

WHEREFORE, it is ORDERED:

1. The proposed settlement with the WVPICF for Eight Hundred and Forty One Thousand Two Hundred and Fifty Four Dollars (\$841,254.00) is approved and Plaintiff is authorized by this Court to execute the Release submitted as Exhibit 1.
2. The Court approves the contractual attorney fee of Forty-Percent (40%), Three Hundred Thirty-Six Thousand Five Hundred and One Dollars and Sixty Cents (\$336,501.60), to

be distributed as follows: One Thousand Two-Hundred Dollars and Zero Cents (\$1,200.00) to the Guardian Ad Litem, S. Douglas Adkins; the remaining Three Hundred Thirty-Five Thousand Three Hundred and One Dollars and Sixty Cents will be distributed as follows: Eighty Percent (80%), Two Hundred and Sixty Eight Thousand Two Hundred Forty-One Dollars and Twenty-Eight Cents (\$268,241.28) to the Piscitelli Law Firm, Attorneys for the Estate of Lora McCarty and Twenty Percent (20%) Sixty-Seven Thousand Sixty Dollars and Thirty-Two Cents (\$67,060.32) to Mundy & Associates, Local Counsel.

3. The Court approves the costs incurred in the amount of Two Hundred Six Dollars and Twenty Cents (\$206.20) to be distributed to Mundy & Associates.
4. The Court approves the amount of Three Hundred and Two Thousand Seven Hundred and Twenty Seven Dollars and Twenty-two Cents (\$302,727.72) to be distributed to Joshua McCarty.
5. The Court approves the amount of Two Hundred and One Thousand Eight Hundred and Eighteen Dollars and Forty-Eight Cents (\$201,818.48) to be distributed to the minor child, Karli Shae McCarty.

**IT IS SO ORDERED.**

11/5/13

  
**JUDGE ROBERT C. CHAMBERS**